

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300

WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500

FACSIMILE (202) 424-7645

WWW.SWIDLAW.COM

DOUGLAS G. BONNER
DIRECT DIAL (202) 424-7701
DGBONNER@SWIDLAW.COM

ORIGINAL

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEW YORK OFFICE

919 THIRD AVENUE

NEW YORK, NY 10022-9998

758-9500 FAX (212) 758-9526

November 23, 1998

BY COURIER

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from GTE Corporation to Bell Atlantic Corporation - CC Docket No. 98-184*

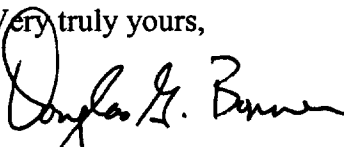
Dear Ms. Salas:

On behalf of Hyperion Telecommunications, Inc., enclosed for filing is an original and four copies of its Initial Comments in the above-referenced docket.

Also enclosed is an extra copy of these Comments. Please date stamp the copy and return it in the enclosed envelope.

If you have any questions, please contact me.

Very truly yours,



Douglas G. Bonner

cc(w/encl.): Janice Myles
Michael Kende
To-Quyen Truong
ITS

No. of Copies rec'd 0+4
List A B C D E

RECEIVED

NOV 23 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Applications for Consent)	
to the Transfer of Control of Licenses)	
and Section 214 Authorizations from)	CC Docket 98-184
)	
GTE CORPORATION,)	
Transferor)	
)	
to)	
)	
BELL ATLANTIC CORPORATION,)	
Transferee)	

**COMMENTS OF
HYPERION TELECOMMUNICATIONS, INC.
IN OPPOSITION TO THE TRANSFER OF CONTROL**

Janet S. Livengood, Esq.
Director of Legal and
Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, PA. 15017-2838
(412) 220-5082 (Tel)
(412) 220-5162 (Fax)

Dana Frix
Douglas G. Bonner
Swidler & Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Counsel for
Hyperion Telecommunications, Inc.

Dated: November 23, 1998

TABLE OF CONTENTS

	<u>Page</u>
Summary	iv
Introduction - Hyperion Telecommunications, Inc. Has a Significant Stake in the Competitive Environment in Bell Atlantic and GTE Service Areas	1
I. The Merger Will Have an Adverse Effect on Local Competition	2
A. The merger will encourage a more powerful merged company to resist market-opening measures.	4
B. The merger will increase the incentive of the merged company to maintain the present geographical division of markets between ILECs.	7
C. The Commission's concern over the anti-competitive effects of the merger should be heightened by the parties' past record of abusing their monopoly position within their current regions and resisting implementation of the market-opening measures of the Telecommunications Act of 1996.	10
D. Bell Atlantic	12
E. GTE	13
1. The Negotiation Process	15
2. The Section 252(i) Adoption Process	16
3. The Process of Establishing Rates Between GTE and CLECs	21
II. The Anticompetitive Effects of the Merger Cannot Be Alleviated by Approval Subject to Conditions	25
III. If the Merger Is Approved, it Should Be Subject to Stringent Market-opening Conditions	26
A. Conditions	26
1. <i>Stranded Cost Recovery</i>	27
2. <i>Resale Restrictions and Pricing</i>	29
3. <i>Availability of Arbitrated Rates</i>	30
4. <i>Section 252(i) Adoptions Without Unlawful Delays, Restrictions or Conditions</i>	31
5. <i>Special Construction Charges</i>	31
6. <i>IntraLATA Toll Dialing Parity</i>	31
7. <i>Interim Number Portability</i>	32
8. <i>Winback Programs</i>	32
9. <i>Fresh Look Opportunity for Bell Atlantic/GTE Customers Subject to Long-term, Multi-Year Contracts</i>	33
10. <i>Operations Support Systems</i>	34

11.	<i>Collocation Arrangements</i>	34
12.	<i>Non-Recurring Charges</i>	34
13.	<i>Resale of Voicemail</i>	35
14.	<i>Performance Reports</i>	35
15.	<i>Performance Standards</i>	36
B.	<i>Sanctions</i>	37
	Conclusion	39

EXECUTIVE SUMMARY

Hyperion Telecommunications Services, Inc. ("Hyperion"), opposes the proposed merger of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE"). This proposed merger of the already massive Bell Atlantic --which one year ago merged with another Regional Bell Operating Company ("RBOC"), NYNEX-- and the equally large GTE, each of whom already wields dominant market power in its service territories, is likely to have a dramatic and adverse impact upon the development of competition in their combined region, due to both companies' demonstrated resistance to competitive entry by facilities-based CLECs such as Hyperion. If approved, this proposed merger will present formidable new obstacles to the successful market entry of Hyperion in its target markets in the eastern United States, including the New England states of Vermont and New York, the Mid-Atlantic states of Pennsylvania and Virginia (where Bell Atlantic and GTE have contiguous local exchange areas), as well as in Florida and South Carolina. It also will have negligible if any impact on the development of competition for consumers in regions outside of the merged entities' service areas. Thus, Hyperion respectfully submits that the Commission should ultimately rule that this proposed merger is not in the public interest.

Should the Commission nevertheless decide that this merger can proceed, it should not allow Bell Atlantic and GTE to become an even larger mega-ILEC (incumbent local exchange carrier) without imposing strong pro-competitive conditions on the mega-ILEC's operations going forward. Specifically, Hyperion asserts that the only way in which the proposed union could possibly be found to serve the public interest is if Bell Atlantic-GTE's commitment to the following conditions is made an essential part of merger approval:

1. GTE's agreement to uniformly charge CLECs prices for unbundled network elements, and interconnection using only forward-looking, cost-based pricing for unbundled network elements.
2. Elimination of resale restrictions and provision of greater wholesale discounts on resold services, including GTE's consent to offer all competitors state commission-arbitrated wholesale discounts.
3. Elimination of Bell Atlantic and GTE-imposed restrictions, conditions and delays associated with adoptions of approved interconnection agreements under Section 252(i).
4. Elimination of special construction charges when such charges would not be imposed upon the RBOC's own end user customers.
5. Implementation of intraLATA toll dialing parity in all states by February 8, 1999, if not otherwise required to implement dialing parity sooner.
6. Establishment of a competitively neutral INP cost recovery mechanism for GTE service areas that is consistent with the FCC's *Number Portability Order*.
7. Mandatory requirements regarding the use of anticompetitive customer "winback programs" by a combined Bell Atlantic-GTE.
8. A "Fresh Look" window for customers in Bell Atlantic-GTE service areas who are subject to pre-competition longterm, multi-year service contracts with termination penalties that prevent consideration of competitive CLEC services.
9. Immediate development of Operational Support Systems that enable competitors to provide service to their end users in parity with the service that Bell Atlantic-GTE provides to its own end users.
10. More flexible CLEC collocation arrangements.
11. Only reasonable, cost-based non-recurring charges for services provided to competitors.
12. Mandatory resale of essential voicemail services.
13. Submission of *monthly* performance reports.

14. Satisfaction of minimum, defined performance standards for Bell Atlantic-GTE performance, including for loop installation, trunk installation and remote call forwarding "cutovers" to minimize customer disruption.

Only by imposing and enforcing such conditions and effective sanctions can the Commission adequately ensure that a new Bell Atlantic-GTE colossus will not abuse its enormous market power to the detriment of competitors, such as Hyperion, throughout the combined mega-ILEC's region.

**COMMENTS OF
HYPERION TELECOMMUNICATIONS, INC.
IN OPPOSITION TO THE TRANSFER OF CONTROL**

**INTRODUCTION - Hyperion Telecommunications, Inc. Has a Significant Stake in the
Competitive Environment in Bell Atlantic and GTE Service Areas.**

Hyperion Telecommunications, Inc. ("Hyperion"), by undersigned counsel, hereby submits its Comments in opposition to the proposed merger of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE"). Hyperion is a diversified telecommunications company whose affiliates provide competitive facilities-based local exchange service primarily within the eastern half of the United States. Hyperion has invested millions of dollars in developing and operating twenty-two competitive local exchange networks in twelve states (Arkansas, Florida, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, New York, Pennsylvania, Tennessee, Vermont, and Virginia). These networks serve forty-six cities and include approximately 5,363 miles of fiber optic cable. Within Bell Atlantic's region, Hyperion affiliates are certificated local exchange carriers and are currently competing with Bell Atlantic in New Jersey, New York, Pennsylvania, Vermont, and Virginia. Within GTE's region, Hyperion affiliates are certificated local exchange carriers and are currently competing with GTE in Kentucky and Pennsylvania. In October 1998, Hyperion's Virginia affiliate executed an interconnection agreement with GTE in Virginia that is pending approval.

Hyperion is also engaged in a major expansion of its existing facilities-based networks in six (6) other states and the District of Columbia within Bell Atlantic's and GTE's regions: Delaware (Bell Atlantic); District of Columbia (Bell Atlantic); Florida (GTE); Maryland (Bell Atlantic); North Carolina (GTE); South Carolina (GTE); and West Virginia (Bell Atlantic). Thus, by early 1999, Hyperion should be a facilities-based competitor of Bell Atlantic and GTE in thirteen (13) states and

the District of Columbia. It is also important to note that Hyperion is already competing in two states in which Bell Atlantic and GTE both operate contiguous local exchange monopolies: Pennsylvania and Virginia. This fact alone gives Hyperion a unique perspective of the anti-competitive effects that a combined Bell Atlantic/GTE company will have on facilities-based new entrants attempting to gain a competitive foothold in Bell Atlantic's and GTE's monopoly service areas.

I. THE MERGER WILL HAVE AN ADVERSE EFFECT ON LOCAL COMPETITION.

This merger, in combination with the proposed SBC-Ameritech merger, has immense ramifications for the competitive local exchange carriers, and could singly determine whether nascent facilities-based competition from new entrants like Hyperion will become formidable or instead merely smaller, relatively insignificant competitors of combined, powerful RBOCs and an RBOC and GTE. These mergers will transform the face of local competition in this country, creating a market in which two giant companies together control over two-thirds of the access lines and an even larger share of business access lines. Bell Atlantic already controls over 41 million access lines^{1/} and serves the headquarters of 175 of the Fortune 500 companies.^{2/} After merging with GTE, the combined company will have 63 million access lines,^{3/} or over one-third of the access lines in the country. If this merger and the SBC/Ameritech merger are approved, the two companies will

^{1/} Bell Atlantic Media Fact Sheet, <http://www.ba.com/kit/> (visited Oct. 30, 1998)

^{2/} "Bell Atlantic and GTE Agree to Merge," Press Release July 28, 1998, <http://www.ba.com/nr/1998/Jul/19980728001.html>

^{3/} "Bell Atlantic and GTE Agree to Merge," Press Release July 28, 1998.

share between them over 67% of the access lines in the country,^{4/} and a larger share of large business access lines.^{5/}

In short, this merger will go a long way towards a re-establishment of the old Bell system. It is hard to imagine a result more at odds with the intended result of the Telecommunications Act of 1996. That Act was designed to introduce competition into local exchange markets, not to resurrect the old Bell monopoly. The result is particularly troubling because neither GTE nor Bell Atlantic has opened its own markets to competition by fully providing the network access and interconnection required by the 1996 Act. Indeed, as Hyperion has experienced firsthand, they have strenuously resisted implementation of the market-opening measures required by the Act. In these circumstances, the Commission should not approve a consolidation of the two monopolies, thereby giving them increased market power and an increased incentive not to allow competition in their own regions.

Bell Atlantic and GTE argue that the merger will not adversely affect competition, because they do not presently compete against each other. However, under section 7 of the Clayton Act,

^{4/} FCC, *Statistics of Common Carriers*, Table 2.10.

^{5/} SBC claims that "224 Fortune 500 companies are headquartered in the 13 states served by SBC, Ameritech, and SNET." *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferee, to SBC Communications Inc., Transferor*, CC Docket 98-141 ("*SBC/Ameritech Merger Proceeding*"), Affidavit of James S. Kahan, ¶ 49 (atch. to *SBC-Ameritech Description of the Transaction, Public Interest Showing and Related Demonstrations* ("SBC/Ameritech Public Interest Statement"). Bell Atlantic serves 175 Fortune 500 headquarters. "Bell Atlantic and GTE Agree to Merge," Press Release July 28, 1998, <http://www.ba.com/nr/1998/Jul/19980728001.html>. That makes a total of 399 Fortune 500 headquarters for the two merged companies combined.

which the Commission must consider in reviewing proposed mergers,^{6/} the Commission is required to consider "not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future." United States v. Philadelphia National Bank, 374 U.S. 321, 362 (1963). The impact of the merger on future competition is a crucially important consideration in the dynamic and changing telecommunications market. There are at least two respects in which the extreme concentration that these mergers will bring about can be expected to have a severe adverse impact on the future of competition in the local exchange market.

A. The merger will encourage a more powerful merged company to resist market-opening measures.

In Bell Atlantic/NYNEX, the Commission recognized that a merger between two large LECs may have an effect on the parties' willingness to cooperate with market-opening measures. That is because "[o]n any particular issue . . . , one incumbent LEC may have an incentive to cooperate with its competitors, contrary to the interests of the other LECs."^{7/} But the precedent set on that issue "will reduce the others' ability to refuse to cooperate the same way." Id. "If two major incumbent LECs merge, however, this incentive may be reduced. To the post-merger incumbent LEC, cooperation in one area may have untoward consequences in another and cooperation may be against the firm's overall interests." Id. As the Commission noted, "[t]his may result in the post-merger LEC cooperating less than the pre-merger incumbent LECs would have in enabling competition to

^{6/} *MCI-WorldCom Order* ¶ 9.

^{7/} *Applications of NYNEX Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985 (1997) ("*Bell Atlantic/NYNEX Merger Order*"), ¶ 154.

grow."^{8/} The Commission found that that factor was not sufficient to require disapproval of the Bell Atlantic-NYNEX merger, although it carefully considered this danger and anticipated that future mergers might raise similar concerns.^{9/}

The inherent risks of reducing incentives to cooperate with market-opening measures is particularly acute in this merger. At present, Bell Atlantic is seeking Section 271 approval for entry into the long-distance market in New York State, and presumably will do so in other States such as Pennsylvania soon thereafter if its application for New York State is approved. Thus Bell Atlantic has at least some incentive to agree to market-opening measures. By contrast, GTE is already actively competing in the long-distance market. As a consequence, GTE has taken an extremely harsh and resistant attitude toward competition.^{10/} GTE's "scorched-earth" tactics have been totally successful in keeping significant competition out of its service areas.^{11/} But after the merger, the

^{8/} *Id.*

^{9/} *Bell Atlantic/NYNEX Merger Order*, ¶ 156.

^{10/} The difference between GTE and the RBOCs became apparent soon after the 1996 Act was passed. Ameritech's CEO was quoted as saying: "The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?" "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," *Washington Post*, October 23, 1996, at C12.

^{11/} The success of GTE's tactics is well documented. In its response to the Second CCB Survey on the State of Local Competition, GTE reported the total of local lines it has provided to other carriers and the total lines it has in service, as of June 30, 1998. The number of total local lines GTE provided other carriers (Total Service Resale and UNE), as a percentage of its total lines in service, is: California - 0.9%; Florida - 1.7%; Hawaii - .02%; Illinois - .005%; Indiana - .0007%; Kentucky - 0.2%; Michigan - 0%; North Carolina - 0.2%; Ohio - .004%; Oregon - .03%; Pennsylvania - .01%; Texas - 1.1%; Virginia - .02%; Washington - .02%; Wisconsin - .06%. <http://www.fcc.gov/ccb/local-competition/survey/responses> Of the total lines GTE provided other carriers, slightly under 1% were UNEs. *Id.*

The comparable figures for Bell Atlantic, while also disturbingly low, are an order of

merged company will have to consider whether the possible benefits from agreement to market-opening measures that might have been persuasive for Bell Atlantic might be offset by the "adverse" precedent set in terms of opening up the market in GTE service areas. With control of over one-third of the nation's access lines at stake, the merged company may well conclude that the benefits of cooperation in terms of Section 271 approval are not worth the cost in terms of losing its control over access lines.

Thus, where the combined ILEC such as Bell Atlantic/GTE covers a third of the country many of the markets being targeted by the Hyperion will also be in the combined company's region, and thus the collateral effect of making it more difficult for the CLEC to enter those other markets within the merged company's expanded region will be an additional reason to resist and delay market-opening measures. In short, the merger will give Bell Atlantic and GTE a huge, expanded and immensely valuable monopoly, which it will have every incentive to defend with all of the prodigious resources at their disposal.

B. The merger will increase the incentive of the merged company to maintain the present geographical division of markets between ILECs.

The Commission has also recognized that "[a]s the number of most significant market participants decreases, all other things being equal, the remaining firms are increasingly able to

magnitude higher than GTE's figures. The number of total local lines Bell Atlantic provided other carriers (Total Service Resale and UNE), as a percentage of its total lines in service, is: Washington, D.C. - 0.75%; Delaware - 1.4%; Massachusetts - 2%; Maryland - 0.4%; Maine - 0.3%; New Hampshire - 1.1%; New Jersey - 0.4%; New York - 2%; Pennsylvania - 1.4%; Rhode Island - 0.8%; Virginia - 0.3%; Vermont - 0.2%; West Virginia - 0%. *Id.* Of the total lines Bell Atlantic provided other carriers, 12.3% were UNEs. *Id.*

arrive at mutually beneficial market equilibria, to the detriment of consumers."^{12/} To date, the present ILECs, with few exceptions, have maintained a geographical division of markets by refraining from significant competitive forays into each other's territories – despite the fact that each ILEC has far more assets and far greater managerial and technical expertise in the provision of local exchange service than most CLECs. That geographical division of markets represents a "mutually beneficial market equilibrium, to the detriment of consumers."

The present geographical division of markets, however, will not necessarily last. For example, in the SBC/Ameritech merger application, the applicants have told the Commission that the prospect of significant competition from large non-ILEC companies (such as MCI WorldCom) for the local exchange business of their large corporate customers has led them to conclude that they must compete out-of-region for these customers or risk losing their business in-region.^{13/} The evidence in that case also shows that Ameritech made a serious out-of-region competitive foray into the St. Louis market, and has obtained CLEC certification in several states.^{14/} GTE acknowledges that it has "an imperative to compete given its island-like service areas in the other Bells' seas," and consequently "already has established a separate corporate unit to plan for entry into territory close to its own few urban franchise areas near Los Angeles, Dallas, Tampa, and Seattle."^{15/} GTE is also "currently testing the use of its own wireless switch in San Francisco to provide local wireline

^{12/} *Bell/Atlantic/NYNEX*, ¶ 121.

^{13/} Affidavit of James S. Kahan, ¶ 13 (atch. to SBC/Ameritech Public Interest Statement)..

^{14/} *SBC/Ameritech Merger Proceeding*, Ex Parte Letter dated October 13, 1998 from Antoinette Cook Bush, Counsel for Ameritech.

^{15/} Application at 7.

service in SBC territory."^{16/} GTE has recently started advertising local service in Columbus, Ohio, an Ameritech city.^{17/} In addition to those cities, GTE also shares an MSA or serves neighboring suburbs with several other urban areas presently controlled by various RBOCs: San Francisco, San Diego, Houston, Chicago, Cleveland, Indianapolis, Detroit, Orlando, Jacksonville, and Portland.^{18/} These areas are natural targets for competitive forays by GTE. Accordingly, it comes as no surprise that both Bell Atlantic and GTE have publicly pronounced that they are able to successively compete without a major new merger. GTE's Chairman and CEO stated earlier this year that he is "confident about GTE's ability to succeed in the competitive marketplace without entering into a major transaction or combination with another company. In other words, we can go it alone and win."^{19/}

If, for example, GTE/Bell Atlantic were considering a competitive foray into Chicago and Los Angeles, it would have to consider whether the prospective benefits outweigh the losses from a retaliatory raid by SBC/Ameritech into New York City.

In these circumstances, the likely result is that both parties will find it mutually beneficial to refrain from competitive forays into each other's territory – thereby continuing to collect the profits from their own monopolies, while avoiding the risk and expense of competitive warfare in each other's territory. Thus this merger, in combination with the SBC/Ameritech merger, lessens

^{16/} Kissell Aff't ¶ 13.

^{17/} An advertisement stating that GTE is offering basic telephone service appeared in the Columbus *Dispatch* of November 4, 1998.

^{18/} SBC/Ameritech Public Interest Statement at 2.

^{19/} GTE Corporation, Annual Report 1997, "Chairman's Message" (emphasis in original).

the chance that the preliminary signs we are now seeing of a break in the present geographical division of markets among the ILECs will actually result in serious inter-ILEC competition.

This analysis is particularly relevant to the merger of GTE with another ILEC. As the Commission has recognized, if a market participant has "something to lose" from competition, it is more likely to participate in tacit market-sharing arrangements.^{20/} Absent the merger, GTE might not have much to lose by mounting competitive challenges in urban areas such as Los Angeles or Chicago or San Francisco. Given GTE's predominantly rural and suburban service areas, it would have less to lose if SBC/Ameritech were to retaliate; and SBC/Ameritech might decide that GTE's service areas are simply not an attractive enough target for retaliation.

But the calculation changes dramatically once GTE merges with Bell Atlantic. At that point, the possible targets for retaliation include New York City and the entire Boston-Washington corridor – markets teeming with lucrative business customers, presenting an attractive target for retaliation should the merged company ignite competitive warfare. Therefore, the sheer size and resources of the combined companies will increase their incentives to adhere to a tacit non-aggression pact, and not to intrude on another mega-RBOC's or mega-ILEC's territory. With existing evidence that the proposed merger companies such as GTE and Ameritech have planned competitive forays outside their regions already, the Commission should be skeptical of the extent to which competition will flourish with fewer dominant incumbent LECs in local exchange markets.

^{20/} *Bell Atlantic/NYNEX Merger Order*, ¶ 123.

C. The Commission's concern over the anti-competitive effects of the merger should be heightened by the parties' past record of abusing their monopoly position within their current regions and resisting implementation of the market-opening measures of the Telecommunications Act of 1996.

In reviewing this merger and the SBC/Ameritech merger, the Commission's principal focus should be the failure of the incumbent ILECs to implement meaningfully the measures required by the Telecommunications Act of 1996 to open local exchange markets to competition. While other telecommunications markets are becoming competitive, the local market has remained stubbornly resistant to competitive reform – and this is the market that is of most concern to the average consumer.

As discussed, a reduction in the number of significant incumbent LECs from six to four – with two companies controlling over two-thirds of all access lines nationwide – will increase the incentive of the merged companies to further resist market-opening measures and to maintain the present geographical division of local markets. The likelihood that these^{21/}enhanced incentives will prevail is enhanced by the parties' past record of using their monopoly position in their current regions to resist the market-opening measures required by the 1996 Act. The record demonstrates that Bell Atlantic and GTE have a management philosophy dedicated to the continuing viability of the monopoly model of local telephone service. This management philosophy makes it particularly likely that the merged company will succumb to the anti-competitive incentives created by this merger, rather than responding in a competitive manner to the forces of change currently at work in the telecommunications market.

^{21/}

Hyperion has had first-hand experience in dealing with Bell Atlantic's resistance to the market-opening measures required by the Telecommunications Act of 1996 ("96 Act"). As Hyperion described in the New York Commission's investigation of Bell Atlantic's 271 application, discussed more fully below, Bell Atlantic has greatly frustrated Hyperion operations to enter the New York local exchange market. More recently, it has insisted upon attaching extensive and unreasonable "clarifications" and other conditions to Hyperion's attempts to exercise its Section 252(i) rights under the 96 Act to obtain the "same terms and conditions" of previously approved interconnection agreements in various states. Such unreasonable conditions impede competitive entry and unlawfully violate the Act.

Notwithstanding the Petitioners' claims and abundant corporate statements to the contrary, they are only reluctantly cooperating with CLECs. Hyperion has encountered countless delays and difficulties, and incurred significant additional expense, in securing nondiscriminatory terms for its interconnection agreements, and in obtaining unbundled network elements, and remote call forwarding (RCF) cutovers for new customers from Bell Atlantic. This poor performance by Bell Atlantic has often had the unjust and anti-competitive result of Hyperion losing to Bell Atlantic the very prospective new customers it hoped to win if not for Bell Atlantic service failures.

It is simply unimaginable that adding GTE — a known bad actor — to Bell Atlantic will result in a merged entity that can be expected to cooperate in the implementation of the pro-competitive policies of the 96 Act. Approval of the proposed merger will only exacerbate the problems that CLECs currently face.

D. Bell Atlantic

In dealing with Bell Atlantic, Hyperion has experienced (and continues to experience) delays in implementing interconnection which are not, in many cases, absolute refusals to deal, but rather consist of the following: (1) unreasonably slow response times to provision essential facilities; (2) failure to fill remote call forwarding ("RCF") orders for new customers in a timely and accurate manner; (3) unreasonable proposed contract terms which violate Commission rulings; (4) drawn out and often bad faith interconnection negotiations which delay agreements and competitive entry while increasing CLEC expense; and (5) similar forms of noncooperation. In the aggregate these difficulties materially impede the implementation of interconnection and frustrate the rapid competitive entry in local markets that the U.S. Congress sought to foster. Hyperion has detailed Bell Atlantic's anti-competitive activities in the following affidavits in the New York Public Service Commission's pending consideration of Bell Atlantic's Section 271 Petition for InterLATA Entry in New York Commission Case 97-C-0271: Affidavit of Christopher J. Rozycki (dated November 19, 1997) and the Supplemental Affidavit of Christopher J. Rozycki (dated January 15, 1998).^{22/} The problems detailed in these affidavits include, among others: (1) Bell Atlantic's disruptive RCF provisioning, including late dispatch, lengthy outages lasting for days, and customer operations performed even when Hyperion has canceled customer cutovers; (2) discriminatory compliance with Commission orders, particularly concerning payment of reciprocal compensation for local traffic to ISPs; and (3) bad faith interconnection negotiations that include unreasonable conditions and delay

^{22/} These affidavits include many exhibits and are lengthy, and are therefore not attached to these comments. However, Hyperion is willing to provide a copy of these affidavits to the Commission if desired, with its reply comments.

on the adoptions of approved interconnection agreements under Section 252(i) of the Telecommunications Act of 1996.

In light of this history, speeches of Bell Atlantic's corporate executives exhorting CLECs to compete in the field^{23/} are thus nothing but misleading rhetoric. It is all very well for Bell Atlantic to refer to its pro-competitive efforts in the aggregate.^{24/} The fact is that where Hyperion tries to work cooperatively, it is generally subjected to slow-roll tactics of one kind or another. It is instructive to note that recently in New York and in other jurisdictions Bell Atlantic has been found guilty of anti-competitive behavior in its dealings with CLECs.^{25/} A suit alleging anti-trust violations by Bell Atlantic in the provision of resale services is also pending in federal court.^{26/}

E. GTE

Although GTE does not compete in all states in Bell Atlantic's region today, the proposed merger is anticompetitive and contrary to the public interest because it will vastly increase the size and economic power of a company with a long history of resisting the market-opening measures now required by federal and state law. Unlike the Bell companies — which are at least subject to the

^{23/} See, e.g., statement of Daniel Whelan available at <http://www.ba.com/nr/1998/Sep/119980903003.html> ("Let's move the game out of the hearing room and on to the field of competition.").

^{24/} See, e.g., *GTE Corporation and Bell Atlantic Corporation for Consent to Transfer of Control*, FCC No. ___, "Public Interest Statement," at 29.

^{25/} See *In the Matter of Complaint and Request of CTC Communications Corp.*, Case 98-C-0426 (September 14, 1998); *In the Matter of CTC Communications Corp.*, D.T.E. 98-18 (Mass. D.T.E. July 2, 1998); *In the Matter of CTC Communications Corporation*, Petition for Enforcement of Resale Agreement, Case No. 98-061, Order No. 23, 040 (N.H. P.U.C. October 7, 1998). The Massachusetts DTE decision is subject to a pending request for reconsideration.

^{26/} *CTC Communications Corp. v. Bell Atlantic Corporation* (D. Me., Case No. 97-395-P-H).

restraint that they cannot enter the long-distance market until they have complied with the "competitive checklist" of Section 271 of the Act, 47 U.S.C. § 271(c)(2)(B) — GTE is presently subject to no such restraint and, as a consequence, has felt little inhibition against engaging in delaying and obstructionist tactics to thwart implementation of federal and state market-opening requirements. Since the Act became law nearly three years ago, GTE's coordinated national strategy of delay and intransigence has stifled development of local competition. Indeed, GTE's tactics have served to close GTE's markets in many states to any substantial local competition from resellers or facilities-based carriers. GTE's success in closing its markets to CLECs is starkly reflected in data it recently submitted to the FCC regarding its provisioning of resold lines and unbundled network elements to CLECs.^{27/}

If GTE is permitted to merge with Bell Atlantic, thereby more than doubling in size and power, its ability and incentive to thwart competitive entry will be heightened, to the detriment of

^{27/} The success of GTE's tactics is well documented. In its response to the Second CCB Survey on the State of Local Competition, GTE reported the total of local lines it has provided to other carriers and the total lines it has in service, as of June 30, 1998. The number of total local lines GTE provided other carriers (Total Service Resale and UNE), as a percentage of its total lines in service, is: California - 0.9%; Florida - 1.7%; Hawaii - .02%; Illinois - .005%; Indiana - .0007%; Kentucky - 0.2%; Michigan - 0%; North Carolina - .02%; Ohio - .004%; Oregon - .03%; Pennsylvania - .01%; Texas - 1.1%; Virginia - .02%; Washington - .02%; Wisconsin - .06%. <http://www.fcc.gov/ccb/local-competition/survey/responses>. Of the total lines GTE provided other carriers, slightly under 1% were UNEs. *Id.*

The comparable figures for Bell Atlantic, while also disturbingly low, are an order of magnitude higher than GTE's figures. The number of total local lines of Bell Atlantic provided other carriers (Total Service Resale and UNE), as a percentage of its total lines in service, is: Washington, D.C. - 0.75%; Delaware - 1.4%; Massachusetts - 2%; Maryland 0.4%; Maine - 0.3%; New Hampshire - 1.1%; New Jersey - 0.4%; New York - 2%; Pennsylvania - 1.4%; Rhode Island - 0.8%; Virginia - 0.3%; Vermont - 0.2%; West Virginia - 0%. *Id.* Of the total lines GTE provided other carriers, slightly under 12.3% were UNEs. *Id.*

competition and the consuming public. As shown below, GTE's strategy to frustrate competitive entry has been based upon two basic principles: GTE makes it as costly and burdensome as possible for CLECs to enter its territory, and then attempts to ensure that the terms and conditions under which CLECs can do business in its territory are as disadvantageous to CLECs as possible. The data set forth above attest eloquently to the success of this anti-competitive strategy.

1. The Negotiation Process

All CLECs seeking to provide competitive local exchange services in GTE's service territory must begin with interconnection negotiations with GTE. While the Act sets out a swift negotiation schedule for achieving such agreements, GTE has perfected methods to make these negotiations difficult, protracted, and costly. GTE's negotiating position regularly ignores and conflicts with state arbitration rulings that have already been issued. As a result, each successive CLEC is forced to negotiate issues which have already been dispositively resolved at the state commission level, needlessly wasting the CLECs resources and detracting from any legitimate issues the parties may need to resolve within the 160 day negotiating period provided by Section 252 of the Act.

Federal courts have uniformly rejected numerous premature GTE appeals of arbitration decisions.^{28/} These GTE appeals serve only to delay the unencumbered availability of interconnection agreements to other CLECs that wish to exercise their 47 U.S.C. § 252(i) rights, preventing competitors from entering the local exchange market.

GTE has also employed obfuscation tactics in various negotiations by changing its positions once negotiations are substantially under way or even after an arbitration proceeding has

^{28/} Published decisions in eight such premature GTE appeals are cited in *Michigan Bell Tel. Co. v. MFS Intelenet of Michigan, Inc.*, 1998 WL 413749 at *4 (W.D. Mich. July 21, 1998).

commenced. CLECs that have negotiated with GTE on a multi-state basis have discovered that after they have negotiated or arbitrated interconnection agreements with GTE for one state, when they move on to negotiate an agreement with GTE for another state, GTE has insisted upon starting negotiations from scratch, rather than carrying forward terms and conditions already agreed to by the parties in other states. In one instance, GTE went so far as to raise at arbitration new contract issues it had never articulated in 160 days of negotiations with a CLEC.^{29/} GTE's backtracking in negotiations is in dereliction of its Section 251(c)(1) duty to negotiate in good faith. The effect of this conduct upon CLECs is to inject unnecessary costs and delays into the interconnection process, which in turn harms consumers by delaying the arrival of genuine local competition. GTE's decision to adopt inconsistent positions in different sets of negotiations represents "bad faith."

2. The Section 252(i) Adoption Process^{30/}

Section 252(i) of the Act provides that CLECs may adopt another approved interconnection agreement "upon the same terms and conditions as those provided in the agreement." Adopting another interconnection agreement should be a purely administrative function in which requisite filings are made to state commissions. No negotiation should be necessary and such adoptions should be conflict-free. Bell Atlantic has, however, turned what Congress intended to be a CLEC's perfunctory exercise of its Section 252(i) rights into a "Gordian knot," attaching unreasonable and unnecessary pre-conditions and interminable administrative delays to any exercise of Section 252(i)

^{29/} *In the Matter of KMC Telecom Inc. Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with GTE North Incorporated*, Cause No. 40832-INT-01 (IN U.R.C. February 11, 1998).

^{30/} For clarity, this section of Hyperion's Comments includes reference to Bell Atlantic as well as to GTE.

rights by a CLEC. As the Delaware Commission has held, "the plain meaning of this statutory provision of the Act [Sec. 252(i)] is that any requesting carrier is entitled to interconnection with a LEC under the same terms and conditions of any other interconnection agreement to which that LEC is a party.^{31/} Bell Atlantic and GTE have also disregarded state commission orders on issues affecting all CLECs by adopting a "divide and conquer" strategy that forces individual CLECs to relitigate issues that have already been litigated by other CLECs against Bell Atlantic and GTE.

Hyperion's negative experience with Bell Atlantic in interconnection negotiations in New York is detailed in the November 19, 1997 Affidavit of Christopher J. Rozycki in Case 97-C-0271. BA-NY derailed months of difficult interconnection negotiations with Hyperion over an issue about which the Commission had unequivocally ruled. Specifically, in September and October, 1997, BA-NY refused to remove language excluding any reciprocal compensation for the calls of its customers that terminate to Hyperion Internet service provider ("ISP") customers. *See Rozycki Affidavit*, ¶¶ 20-21. The reciprocal compensation exclusion which BA-NY insisted upon violated a prior Commission ruling which controlled this issue.^{32/} BA-NY's initial proposed draft agreements, including an August, 1997 draft, did not discriminate against the payment of reciprocal compensation for ISP traffic. However, as negotiations were drawing to a close, without alerting

^{31/} *Joint Application of Bell Atlantic-Delaware, Inc. and Focal Communications Corporation of Pennsylvania*, Findings and Recommendations, Docket No. 98-275, at 9-10 (Del. P.S.C. Sept. 10, 1998); *see also QST Communications, Inc. v. Ameritech Illinois*, Order, File No. 98-0603 (Ill. C.C. Nov. 5, 1998) (holding that Sec. 252(i) entitles a CLEC to adopt approved agreement "in its entirety" and ILEC's refusal to allow CLEC to do so is a violation of Sec. 252(i).

^{32/} *See Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Order, New York PSC Case 97-C-1275 (July 17, 1997) (interim ruling requiring BA-NY to pay reciprocal compensation for local traffic terminated to ISP customers of CLECs)

Hyperion, and notwithstanding the Commission's July 17, 1997 interim ruling, BA-NY unilaterally added new contrary language to a September 26, 1997 draft of the agreement which it refused to remove at Hyperion's request. *See* Rozycki Affidavit, ¶ 21. As a consequence, BA-NY effectively precluded Hyperion from obtaining a variety of other advantageous, previously negotiated terms by forcing Hyperion to opt into an existing interconnection agreement as Hyperion's sole recourse (other than a lengthy and costly arbitration) to avoid the exclusion of an entire segment of its customers from eligibility for reciprocal compensation under the Commission's July 17, 1997. To make matters worse, even though the agreement which Hyperion adopted under Sec. 252(i) of the 1996 Act is identical to those of other parties to whom BA-NY currently pays reciprocal compensation for ISP traffic, BA-NY persisted in refusing to pay Hyperion for such traffic.^{33/}

BA-NY demonstrated threefold its bad faith negotiations under the Act by (i) concealing its behavior; (ii) refusing to remedy its behavior until Hyperion requested the Commission's intervention (*see* Exhibits B & C), and (iii) by defying a New York Commission order in so acting. In doing so, BA-NY has sought, in bad faith, to exhaust the limited resources of a new entrant seeking to compete. These factors highlight Bell Atlantic's lack of credibility when it issues statements welcoming the onset of competition.

^{33/} See October 17, 1997 letter of Bell Atlantic's Maureen Thompson, Esq. to Douglas G. Bonner stating that "BA-NY will not provide reciprocal compensation to Hyperion for ISP Traffic." See, Exhibit A. Hyperion was forced to file a December 17, 1997 complaint letter requesting the intervention of the Commission to address this disparate treatment by Bell Atlantic. See, Exhibit B (attachments excluded). By January 15, 1998 letter from Daniel M. Martin, Chief, Tariff & Rates, Communications Division, it was confirmed that BA-NY finally assented to comply with Commission decisions, and agreed that "Hyperion will be compensated for calls it terminates to its Internet service provider customers." See, Exhibit C.

More recently, Bell Atlantic's anti-competitive behavior, and bad faith negotiations in violation of Section 251(c)(1) has crept into the terms of Section 252(i) agreements to adopt previously approved interconnection agreements. Under this procedure, after receiving a formal request to opt into a specific agreement, both carriers return a draft opt-in document that requires the CLEC exercising its Section 252(i) rights to adopt prospectively any subsequent modifications to the agreement that the original parties subsequently negotiate. But such a requirement does not hold water. As an example, the initial CLEC could determine that it will pursue only a resale strategy and modify its agreement by deleting provisions for purchase of unbundled elements in exchange for gains in other areas of the agreement. While this might benefit the initial CLEC, the CLEC exercising its Section 252(i) would be locked into an agreement that was desirable when it opted in, but has been changed by other parties and has become unsatisfactory. Clearly, incumbent LECs ("ILECs") are not entitled to renegotiate other carriers' contracts without their participation. Yet, GTE and Bell Atlantic insist on negotiating this provision every time a carrier opts into the agreement. One month ago, GTE recently required Hyperion's affiliate in Virginia to execute such an opt-in agreement (see October 20, 1998 GTE Sec. 252(i) adoption letter to Douglas G. Bonner, Counsel for Hyperion Telecommunications of Virginia, Inc., attached as Exhibit D).

Bell Atlantic has used the opt in process to attempt to exact concessions from CLECs regarding reciprocal compensation. For example, in negotiations between Hyperion's Vermont affiliate and Bell Atlantic to renegotiate its interconnection agreement, Hyperion formally notified Bell Atlantic on August 7, 1998 of Hyperion's decision to opt into the terms of another interconnection agreement previously approved by the Vermont Board. In response, Bell Atlantic has made it a precondition for its execution of a Section 252(i) adoption agreement that Hyperion

agree to (1) provide extensive service to residential customers in urban, suburban and rural areas and "diverse locations" of Vermont, and (2) within 60 days of execution of the Agreement, to file amended tariffs to "provide residence local exchange service" in Vermont. See Exhibit E (Draft Bell Atlantic - Vermont October 7, 1998 Interconnection Agreement, Clarification 2.4, at 4-5). Notwithstanding Hyperion's prior vehement objections, Bell Atlantic is thus unlawfully seeking to demand unacceptable conditions from CLECs in connection with the Section 252(i) process. Although Vermont has no mandatory service area requirements obligating CLECs to offer service to those customers and in those density zones where Bell Atlantic seeks to require Hyperion to offer service, Bell Atlantic for the most self-serving reasons is blatantly withholding compliance with its Section 252(i) obligations. Unless a CLEC first makes impossible concessions to Bell Atlantic – to include no less than revising its market entry plan at its chief competitor's whim – or to help Bell Atlantic make its case for interLATA entry in the state of Vermont, Bell Atlantic will refuse to comply with its obligations under Section 252(i). Bell Atlantic is thus engaging in the rankest form of anti-competitive efforts to extort unacceptable and outrageous concessions from Hyperion each time that Hyperion attempts to exercise its Section 252(i) rights. In the meantime, Hyperion's adoption of a previously approved interconnection agreement in Vermont that it has requested from Bell Atlantic since August, 1998, has been delayed, to Hyperion's detriment, and Hyperion has been forced to extend its existing interconnection agreement twice due to Bell Atlantic's unacceptable resistance to its Section 252(i) obligations.

While Bell Atlantic has engaged in anticompetitive refusal to comply in good faith with the clear language of Section 252(i), GTE relishes non-compliance with prior state commission orders, requiring virtually every CLEC to litigate previously litigated issues before the same state

commission another time with GTE. For example, GTE has refused to pay Hyperion's affiliate in Pennsylvania reciprocal compensation charges for local calls, including calls that Hyperion has terminated to Internet service providers, notwithstanding a Pennsylvania Commission ruling to the contrary. *See, Opinion and Order, Petition for Declaratory Order of TCG Delaware Valley, Inc. for Clarification of Section 5.7.2 of its Interconnection Agreement with Bell Atlantic - Pennsylvania, Inc.*, Case No. P-00971256 (June 16, 1998). Less than one week ago, on November 13, 1998, Hyperion was forced to initiate American Arbitration Association proceedings to recover payment of more than \$584,000. of reciprocal compensation charges to GTE in Pennsylvania (see Exhibit F). GTE has been extremely intransigent and unyielding in complying with state commission orders on reciprocal compensation, and Hyperion has grave concerns about whether a combined Bell Atlantic/GTE will comply at all with existing state commission orders on reciprocal compensation, as well as on other regulatory issues where Bell Atlantic and GTE appear to be taking altogether different positions.

3. The Process of Establishing Rates Between GTE and CLECs

For CLECs to be able to compete effectively in GTE markets, they must be able to obtain critical services, such as unbundled loops, at reasonable, cost-based rates. Otherwise, their theoretical "right" to compete in GTE territory will remain just that: a "theoretical right." Unfortunately, GTE has erected substantial obstacles to a CLEC's ability to obtain reasonable rates for these critical services. A CLEC has a choice: it can pay the unreasonable rates advocated by GTE or it can engage in a costly and time-consuming struggle in a rate proceeding to establish the impropriety of GTE's proposals. Since enactment of the Act, GTE has consistently taken the position that it should be entitled to recover all of its historical costs from competitors through rates

for unbundled network element, notwithstanding the forward-looking cost standard contained in Section 252(d)(1) of the Act. For example, the Ohio PUC rejected GTE's position that its interconnection agreement with AT&T could not go into effect "until such time as the Commission has put into place a mechanism to provide GTE with the opportunity to recover its historic costs and (2) established a universal service system which is competitively neutral."^{34/} Similarly, GTE unsuccessfully argued before the Ohio Commission in its arbitration with Sprint that Sprint should be required to pay for GTE's "opportunity costs."^{35/}

Likewise, from Missouri to Hawaii to Indiana to Minnesota to North Carolina to New Mexico,^{36/} GTE has repeatedly argued that the Act has caused it harm, so that it is forced to sell access to its network elements at rates that somehow are not compensatory. Of course, such claims are flatly inconsistent with the optimistic tone taken by GTE in its 1996 Annual Report, when its Chairman trumpeted passage of the Act as "a triple-win situation. It's good for the country. It's good for consumers. And it's *great* for GTE."^{37/}

The Act expressly prohibits the kind of stranded cost recovery that GTE has proposed in state after state. Section 252(d) of the Act specifically limits the costs that ILECs will be allowed to recover to those costs "determined without reference to a rate-of-return or other rate-based

^{34/} Opinion and Order, *In the Matter of the Petition of AT&T Communications of Ohio for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with GTE North Incorporated*, Case No. 96-832-TP-ARB (OH P.U.C. May 1, 1997) at Attachment, p.6.

^{35/} *Sprint Ohio Arbitration Award*, at 13.

^{36/} Case No. TO-97-124 (Mo. P.S.C.); Docket 7702 (HI P.U.C.); Cause No. 40618 (IN U.R.C.); Docket No. P-442, 407/M-96-939 (Minn. P.U.C.); Docket No. P-100, Sub133d (NC U.C.); Docket No. 96-310-TC (NM S.C.C.).

^{37/} 1996 GTE Annual Report, Chairman's Message (emphasis in original).

proceeding."^{38/} While the statute clearly disallows the stranded cost recovery that GTE repeatedly proposes, and no state commission to date has approved such a recovery mechanism in the telecommunications context, GTE continues to offer up this proposal in state after state in an effort to inflate its prices and foist historical costs onto competitors. Indeed, in addition to the Ohio Commission's above cited ruling in the AT&T and Sprint arbitrations, commissions in Missouri, Indiana, Minnesota, New Mexico, Virginia and Washington, and two federal district courts, have already issued rulings stating that GTE's efforts to raise the costs that new entrants will pay to access its network and compete for customers are inconsistent with the Act.^{39/}

To place further burdens upon CLECs seeking to enter GTE territory, in addition to its "stranded cost" recovery theory, GTE has also proposed in several states that competitors pay a so-called "interim universal service" surcharge directly to GTE.^{40/} Again, this surcharge has no

^{38/} 47 U.S.C. § 252(d)(1)(A)(i) (1996).

^{39/} *GTE South, Inc. v. Morrison*, 6 F.Supp.2d 517, 528-29 (E.D. Va. 1998) (upholding the Virginia Commission adoption of a forward-looking cost mechanism in an arbitrated interconnection agreement and concluding that historical costs are excluded by the 96 Act); *MCIMetro Access Transmission Services, Inc. v. GTE Northwest, Inc.*, No. C97-9058WD, slip op. at 6-7 (W.D. Wash. July 7, 1998) (upholding Washington Commission's exclusion of actual and historical costs from GTE pricing of interconnection and network elements and holding that "Section 251(d)(1) does not require that a 'just and reasonable rate' be based on actual or historical costs"); Re *Sprint Communications Company, L.P.*, Case No. TO-97-124, 176 P.U.R. 4th 285, 289 (Mo. P.S.C. January 20, 1997); *In the Matter of the Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection Services, Unbundled Elements, Transport and Termination Under the Telecommunications Act of 1996*, Cause No. 40618 (IN U.R.C. May 7, 1998); *AT&T Communications of the Midwest, Inc.*, Docket No. P-442, 407/M-96-939, 1997 WL 178602, at *12 (Minn. P.U.C. March 14, 1997); *In the Matter of the Consideration of a Rule Concerning Costing Methodologies*, Docket No. 96-310-TC (N.M. S.C.C. July 15, 1998), at 50-52. Decisions in Hawaii and North Carolina are pending.

^{40/} Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-100, Sub133d (North Carolina U.C.). Decisions on the proposed interim surcharge are pending in the

relationship whatsoever to the pricing standards in the Act: GTE would have its competitors pay this extra amount to ensure that it does not lose any "support" when those competitors take certain customers away from GTE's network. This proposed surcharge also does not have any relation to universal service principles under the Act, as a mechanism that pays directly to the ILEC for alleged losses of implicit subsidies can hardly be considered equitable and nondiscriminatory.^{41/} In fact, even though the fundamental principle of universal service is to make telecommunications affordable for consumers,^{42/} GTE's proposed surcharges have been aimed solely at bolstering its competitive position through the imposition of unwarranted financial burdens on CLECs.

GTE has also attempted to maintain its monopoly position in its service areas by ensuring that business customers who need essential services commit to long-term service contracts with punitive termination penalties if the term of the agreement is not fully met. Hyperion's affiliate in GTE's service areas in Pennsylvania, Hyperion Susquehanna Telecommunications, is the only other facilities-based CLEC operating in GTE service areas in Pennsylvania. Facing an inability to market to many business customers in GTE service areas who have had no alternative but to sign long-term service agreements with GTE prior to competitive entry, Hyperion was forced to file a "fresh look" complaint against GTE North, Incorporated with the Pennsylvania Commission this year. *Hyperion*

Hawaii and North Carolina proceedings, while consideration of this issue has been transferred to a general universal service docket by the Indiana Commission. The New Mexico State Corporation Commission has rejected GTE's proposed interim universal service surcharge, noting that "double recovery of costs may result." *In the Matter of the Consideration of a Rule Concerning Costing Methodologies*, Docket No. 96-310-TC, at 52 (N.M. S.C.C. July 15, 1998).

^{41/} See 47 U.S.C. § 254(b)(4) (1996).

^{42/} *Id.* at § 245(b)(1).

Susquehanna Telecommunications v. GTE North Incorporated, Pa. PUC Docket No. C-00981575 (filed May 7, 1998). In its Answer and Motion to Dismiss (still pending) filed in that docket, GTE is vigorously opposing a fresh look opportunity for its customers in Pennsylvania.

There can be little doubt, based upon its conduct in permanent rate proceedings in other states, its refusal to pay reciprocal compensation, and its opposition to a fresh look opportunity for its customers who have signed long-term contracts before competitive entry, that GTE will do everything in its power to impede CLECs' entry and add to their costs of doing business. Although Bell Atlantic's behavior (as noted herein) has been very anti-competitive, GTE's track record falls to an even lower plane. The worst possible result of the proposed merger would be for GTE's corporate philosophy toward competition to become characteristic of the merged entity.

II. THE ANTICOMPETITIVE EFFECTS OF THE MERGER CANNOT BE ALLEVIATED BY APPROVAL SUBJECT TO CONDITIONS

In the Bell Atlantic/NYNEX merger, the Commission took the approach of approving the merger subject to certain market-opening conditions. However, that approach has not been a success, as evidenced by MCI's recent complaint filed with the Commission charging Bell Atlantic with numerous violations of those conditions,^{43/} as well as by Hyperion's own experience with Bell Atlantic. The essential problem with approval conditions is that the merger cannot be undone once it is approved, and the prospect of other penalties is unlikely to deter the merged company from resisting implementation of market-opening measures – particularly when monopoly control over one-third of the access lines in the country is at stake.

^{43/} Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., File No. E-98-32 (filed Mar. 17, 1998).

The likelihood that conditions to merger approval will be ineffective is particularly high where the merger, as here, is between parties with a history of resistance to the market-opening requirement of the Telecommunications Act of 1996. Given that Bell Atlantic's and GTE's management philosophy which this history demonstrates, it is fair to expect that the merged company will also resist implementation of any market-opening conditions the Commission may attach to approval of the merger.

III. IF THE MERGER IS APPROVED, IT SHOULD BE SUBJECT TO STRINGENT MARKET-OPENING CONDITIONS

If this merger is approved, improved conditions are needed to ensure that the merged company will truly open its markets to competitive entry, and swift sanctions are essential to address any failure to comply with these market-opening conditions.

A. Conditions

As noted above, if the merger is to be approved, the Bell Atlantic-NYNEX merger conditions should serve only as a floor in addressing the competitive concerns that will arise from the creation of the Bell Atlantic-GTE entity. At a minimum, the conditions agreed to in connection with the Bell Atlantic-NYNEX merger should be an initial starting point for any consideration of approval by the Commission. Nevertheless, given the demonstrated resistance to competition that each of the petitioners has demonstrated to competition --often in quite different yet equally odious ways -- further significant measures are needed to ensure that competition takes root in any new mega-ILEC's combined service territories. Specifically, the Commission should address the following concerns in structuring additional conditions for merger approval:

1. ***Stranded Cost Recovery:*** Since enactment of the Telecommunications Act of 1996, GTE has consistently taken the position that it should be entitled to recover all of its historical costs from competitors through UNE prices, notwithstanding the forward-looking cost standard contained in section 252(d) of the Act. From Missouri to Hawaii to Indiana to Minnesota to North Carolina,^{44/} GTE has repeatedly argued that the 1996 Act has caused it harm, such that it is forced to sell access to its network elements at rates that are somehow less than compensatory. Of course, such claims are flatly inconsistent with the optimistic tone taken by GTE in its 1996 Annual Report, when its Chairman trumpeted passage of the 1996 Act as "a triple-win situation. It's good for the country. It's good for consumers. And it's *great* for GTE."^{45/}

The Act expressly prohibits the kind of stranded cost recovery that GTE has proposed state after state. Section 252(d) of the Act specifically limits the costs that ILECs will be allowed to recover to those costs "determined without reference to a rate-of-return or other rate-based proceeding."^{46/} While the statute clearly disallows the stranded cost recovery that GTE repeatedly proposes, and no state commission to date has approved such a recovery mechanism in the telecommunications context, GTE continues to offer up this proposal in state after state in an effort to inflate its prices and foist historical costs onto competitors. Indeed, Missouri, Indiana, and

^{44/} Case No. TO-97-124 (Mo. P.S.C.); Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-442, 407/M-96-939 (Minn. P.U.C.); Docket No. P-100, Sub133d (North Carolina U.C.).

^{45/} 1996 GTE Annual Report, Chairman's Message (emphasis in original).

^{46/} 47 U.S.C. § 252(d)(1)(A)(i) (1996).

Minnesota have already issued rulings denying GTE's efforts to raise the costs that new entrants will pay to access its network and compete for customers.^{47/}

It is immaterial that GTE tends to propose such recovery through a stand-alone surcharge. Quite simply, GTE should not be permitted to smuggle in the back door what the Act prohibits through the front door, and it should not be permitted to relitigate this losing issue in state after state so that its competitors are forced to spend time and resources overcoming this proposed barrier to entry. Consistent with its own interpretation of the Act and the reasonable opinions of all states that have thus far considered GTE's efforts to recover stranded costs, this Commission should ensure that GTE cannot yet again attempt to impose the exaggerated, embedded costs of its network operations on its competitors.

The need for such a forward-looking pricing condition is all the more apparent when one considers that GTE also has tried to protect its historical revenue streams by proposing in several states that competitors pay a so-called "universal service" surcharge directly to GTE.^{48/} Again, this surcharge has no relationship whatsoever to the pricing standards in the Act: GTE would have its competitors pay this extra amount to ensure that it does not lose any "support" when those

^{47/} *Sprint Communications Company, L.P.*, Case No. TO-97-124, 176 P.U.R. 4th 285, 289 (Mo. P.S.C. Jan. 20, 1997); *Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection Services, Unbundled Elements, Transport and Termination Under the Telecommunications Act of 1996*, Cause No. 40618 (I.U.R.C. May 7, 1998); *AT&T Communications of the Midwest, Inc.*, Docket No. P-442, 407/M-96-939, 1997 WL 178602, at *12 (Minn. P.U.C. Mar. 14, 1997). Decisions in Hawaii and North Carolina are pending.

^{48/} Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-100, Sub133d (North Carolina U.C.). Decisions on the proposed interim surcharge are pending in the Hawaii and North Carolina proceedings, while consideration of this issue has been transferred to a general universal service docket by the Indiana commission.

competitors take certain customers off of GTE's network. Nor does this proposed surcharge have any relation to universal service principles under the Act, as a mechanism that pays directly to the incumbent carrier for alleged losses of implicit subsidies can hardly be considered competitively neutral.^{49/} In fact, even though the fundamental principle of universal service is to make telecommunications affordable for consumers,^{50/} GTE's proposed surcharges have been aimed solely at making the provision of telecommunications affordable *for GTE*. Only by making the establishment of forward-looking UNE prices a condition of merger approval can this Commission adequately ensure that make-whole schemes such as the so-called "universal service" surcharge that GTE has proposed in other states will not serve to deter competitive entry into GTE's Ohio markets. *In short, the Commission should require as a condition of merger approval that GTE charge forward-looking prices – and only forward-looking prices – to new entrants seeking to compete with GTE.*

2. Resale Restrictions and Pricing: The Commission should require the new Bell Atlantic-GTE to commit to eliminate unreasonable restrictions on resale and to provide greater wholesale discounts on resold services in accordance with the avoidable cost standard set forth in the *Local Competition Order*. For example, Bell Atlantic has taken the position that whenever a customer under a contract service arrangement ("CSA") wants to switch the contracted service to a reseller, the customer may not avail itself of this competitive service option. While Bell Atlantic has

^{49/} 47 U.S.C. § 254(b)(4) (1996).

^{50/} *Id.* at § 251(b)(1).

already litigated and lost on this issue in several states,^{51/} it is still seeking to enforce this policy in other jurisdictions, and to impose termination penalties upon customers even if it will let them switch their contract services to a reseller. These unreasonable restrictions have no basis in law and serve only to deter end users from availing themselves of the competitive opportunities envisioned by the Act.

3. ***Availability of Arbitrated Rates:*** In a number of states, GTE is declining to make available to other carriers those UNE prices and resold discounts that are the product of its arbitrations with AT&T. Because AT&T and GTE have not executed final interconnection agreements in many states, GTE prevents other CLECs from purchasing UNEs and resold services from GTE at the arbitrated rates. In essence, GTE would require each CLEC to relitigate the same cost studies to obtain these rates.^{52/} Quite simply, this is a barrier to entry that GTE has erected out of legal fiction. Requiring GTE to make its arbitrated rates available to all competitors will dramatically reduce the legal costs associated with competitive entry and spare state commissions the administrative burden of repetitive arbitration proceedings.

^{51/} *See, e.g., Complaint and Request of CTC Communications, Inc. for emergency relief against New York Telephone d/b/a/ Bell Atlantic-New York for violation of sections 251(c)(4) and 252 of the Communications Act of 1934, as amended, section 91 of the N.Y. Pub. Serv. Law, and Resale Tariff PSC No. 915, Case 98-C-0426, Order Granting Petition (N.Y.P.S.C. Sept. 14, 1998); CTC Communications Corporation Petition for Enforcement of Resale Agreement and to Permit Assignment of Retail Contracts, DR 98-061, Order No. 23,040 (N.H.P.U.C. Oct. 7, 1998).*

^{52/} *See, e.g., US Xchange of Indiana, L.L.C. Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions With GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of the South, Cause No. 41034-INT-01 (I.U.R.C. Feb. 11, 1998) (adopting AT&T-GTE arbitrated rates on an interim basis after GTE attempted to compel US Xchange to take higher rates).*

4. Section 252(i) Adoptions Without Unlawful Delays, Restrictions or Conditions.

The Commission should seize this opportunity to be in the vanguard of state commissions which have ruled that Bell Atlantic may not restrict or attach conditions upon the ability of a CLEC to adopt the terms of another Commission-approved interconnection agreement upon "the same terms and conditions" as the underlying carrier. The Maryland and Delaware Commissions earlier this year granted petitions by Starpower Communications LLC to obtain the rates and terms of underlying interconnection agreements under Section 252(i).^{53/} Requiring as a policy matter that Section 252(i) adoption procedures avoid the attachment of Bell Atlantic or GTE imposed pre-conditions, "clarifications" or *quid pro quos*, will most certainly avoid the time-consuming and expensive (for Commissions and CLECs) litigation of Section 252(i) disputes between CLECs on the one hand and Bell Atlantic or GTE on the other.

5. Special Construction Charges: The Commission should require the new Bell Atlantic-GTE to refrain from charging special construction charges to CLECs – or to the CLECs' end users – when such charges would not be charged to the super ILEC's own end user customers. Moreover, to the extent that such charges are imposed upon CLECs or their end users, the super ILEC should be required to provide justification for imposing these charges and forward-looking TELRIC analyses supporting their imposition if challenged.

6. IntraLATA Toll Dialing Parity: The Commission should require the new Bell Atlantic-GTE to provide 1+ intraLATA dialing parity in all states throughout its combined region

^{53/} See, e.g. September 4, 1998 letter of Donald P. Eveleth, Acting Executive Secretary, Maryland Public Service Commission, on Starpower Communications, LLC's Petition for Commission Determination of Rates (filed June 16, 1998), ML#s 62554, 62269, 62639, and 62703.

by no later than February 8, 1999, if not otherwise required to implement dialing parity sooner. In state after state, Bell Atlantic has litigated and lost on the position that it is not required to implement toll dialing parity by this date under the Act. While proceedings to consider this matter are pending in several states, clear direction from this Commission would remove any uncertainty in all jurisdictions going forward and save CLECs further costs in prosecuting such claims.

7. ***Interim Number Portability:*** Despite the fact that this Commission has ruled that interim number portability ("INP") costs should be recovered from competitors in a competitively neutral manner,^{54/} GTE has proposed in state after state that it should be permitted to recover the full incremental cost of providing INP from its competitors.^{55/} The Commission specifically rejected such a proposal in its *Number Portability Order*, and instead set forth a number of alternative mechanisms for states to consider in deciding how INP costs should be recovered. Rather than making competitors fight this issue all over again with GTE in yet another jurisdiction, this Commission should compel the new Bell Atlantic-GTE, as a condition of merger approval, to establish a competitively neutral INP cost recovery mechanism that is consistent with those set forth in the *Number Portability Order*.

8. ***Winback Programs:*** The Commission should issue a clear directive regarding the use of winback programs by Bell Atlantic-GTE, and the sharing of information between its retail and wholesale operations. To stop this anticompetitive, backdoor sharing of information, the

^{54/} *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order (rel. July 2, 1996), at ¶ 138 ("*Number Portability Order*").

^{55/} Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-100, Sub133d (North Carolina U.C.).

Commission should establish that the ILEC's winning back of a customer prior to switching over to the competitor's retail service is *prima facie* evidence of a violation of section 251 of the Act. Moreover, to ensure that Bell Atlantic-GTE's incentives to engage in such conduct are minimized, the Commission might consider establishing a window of time – perhaps 30 days – during which the super ILEC would be prohibited from contacting any customer that has switched to a competitor's service.

9. *Fresh Look Opportunity for Bell Atlantic/GTE Customers Subject to Long-term, Multi-Year Contracts.*

Hyperion and other facilities-based CLECs who have made substantial investments in facilities to offer customers competitive options are confronting a significant barrier to competitive entry in Bell Atlantic and GTE service areas that they can do little about as competitors: long-term business customer contracts with severe pre-termination penalties entered into before competitive entry. This is particularly the case in service territories such as GTE's in the mid-Atlantic states and Bell Atlantic's less densely populated states such as in New England with few large metropolitan areas that can attract a large number of CLEC competitors. Yet these are states in which Hyperion nonetheless is attempting to compete. If facilities-based competition is to develop rapidly in these states as Congress intended –as opposed to being dependent as an *initial* matter upon multi-year contracts expiring that were executed before competition even appeared on the scene– customers must be allowed a "fresh look" to consider CLEC competitive offerings without fear of punitive penalty clauses in long-term GTE and Bell Atlantic contracts. Otherwise, a more powerful, merged Bell Atlantic and GTE will likely maintain an even tighter grip of these small and medium-sized business customers in less densely populated local exchange areas under multi-year contracts,

frustrating the prospects for any facilities-based local competition for these enduser customers. The petitioners should be required to consent to a "fresh look" window without contractual penalties for their customers where any such petition or request is pending in their service areas, including but not limited to Hyperion's pending petition in *Hyperion Susquehanna Telecommunications v. GTE North Incorporated*, Pennsylvania PUC Docket No. C-00981575 (filed May 7, 1998).

10. Operations Support Systems: The Commission should require the new Bell Atlantic-GTE to commit to immediate development of operational support systems ("OSS") that will enable CLECs and other new entrants to provide service to their end users in parity with the service that the new ILEC provides to its end users.

11. Collocation Arrangements: The Commission should direct the new Bell Atlantic-GTE to provide more flexible collocation arrangements if the merger is approved. For example, the Commission should require the super ILEC to: (i) offer carriers access to less than 100 square feet of collocation space if desired; and (ii) allow carriers to collocate equipment that is necessary for interconnection and the use of unbundled network elements, even if that equipment could also be used for other purposes.

12. Non-Recurring Charges: Bell Atlantic-GTE should be required to impose only reasonable, cost-based non-recurring charges ("NRCs") for services provided to competitors. In the resale context, where there is a retail analogue to the charge that would be imposed upon the reseller, these NRCs should be developed on the basis of an avoided cost analysis that applies a wholesale discount to the retail NRC. GTE has refused to do this. In the context of UNEs and where a retail analogue does not exist for a resale NRC (*e.g.*, a service migration charge), the NRCs should be developed using TELRIC principles.

13. Resale of Voicemail: If the merger is to be approved, Bell Atlantic-GTE should be required to make its voicemail services ("VMS") available for resale at an avoided cost discount, or at the very least, at the retail price for those services. Technical limitations and economic barriers prevent even facilities-based carriers such as Hyperion from economically and rapidly offering VMS in the same manner and at the same level of quality that the ILEC offers to its own customers. The inability to quickly offer VMS upon entering a new market places CLECs at a competitive disadvantage, as they may not offer an entire segment of the ILEC's customer base the VMS they have come to expect from the incumbent. Requiring Bell Atlantic-GTE to provide VMS for resale would eliminate the tying arrangement between the ILEC's local exchange service and its VMS, and provide CLECs and resellers with the opportunity to compete for each and every customer in the ILEC's embedded customer base.

14. Performance Reports: The Commission should also require the combined Bell Atlantic-GTE to submit *monthly* performance reports, in lieu of the quarterly reports required in the context of the BA-NYNEX merger.^{56/} Since Bell Atlantic is already compiling data on a monthly basis under the existing merger conditions, it should not be too much of an additional burden to publish those results on a monthly basis as well. By contrast, a span of even three months can make a substantial difference in deciding whether to enter a market or in attempting to withstand the continuing anticompetitive conduct of an incumbent – especially one like the proposed Bell Atlantic-GTE company, which would have a monopolistic level of market share and bottleneck control of essential facilities across such a large span of the nation.

^{56/} *Bell Atlantic/NYNEX Merger Order*, at Appendix C.1.d.

15. Performance Standards: Finally, the Commission should attach conditions to the merger compelling Bell Atlantic-GTE to satisfy certain levels of performance in providing interconnection services, UNEs, and resold services to competitors. For each reporting category imposed as part of Condition 13, the new super ILEC should be required to meet a certain threshold of performance (whether it be a set interval or a specific success rate) so that carriers can determine with certainty when Bell Atlantic-GTE is discriminating in the provision of service.

Hyperion acknowledges that the Commission tentatively concluded in its OSS rulemaking that it would be "premature" to develop performance standards.^{57/} There is no other means available, however, to ensure that Bell Atlantic-GTE will provide service in a nondiscriminatory manner. If the Commission believes there is not enough evidence on the record to establish sufficiently detailed performance standards, it could adopt interim performance standards that are based upon how Bell Atlantic-GTE provide service in the context of their retail operations. Specifically, the Commission could first direct Bell Atlantic-GTE to identify a level of performance that mirrors its own self-provisioning of service, and after several months of reports, the Commission could revisit this issue and adjust the standards as necessary. Alternatively, the Commission could utilize a "floating" standard of performance for each category, such that the standard for each month would be set by looking at Bell Atlantic-GTE's performance in running its retail operations during that month. In either case, these standards could be superseded once permanent performance benchmarks are established in the Commission's OSS proceeding.

^{57/} *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. Apr. 17, 1998), at ¶125.

B. Sanctions

More detailed conditions and more stringent reporting requirements are only a means to an end in minimizing a powerful new Bell Atlantic/GTE's ability to discriminate against competitors. The larger question is whether CLECs will have an effective recourse if they discover that the new Bell Atlantic-GTE is in fact engaging in discriminatory conduct or violating merger conditions. Unfortunately, as the MCI Complaint demonstrates, reliance upon the Commission's complaint procedures may not bring speedy resolution. Thus, the Commission should establish a system of reasonable yet strict financial sanctions for failure to adhere to the performance standards incorporated in the merger conditions. For example, if the combined Bell Atlantic-GTE's performance in any category in which it is required to report falls below the level of performance it provides for its own operations for two consecutive months, the Commission should assess a fine of \$75,000 for each month thereafter that the substandard performance in that category continues. The proposed amount of this fine has a sound basis, as Bell Atlantic has previously entered into interconnection agreements that provide for such liquidated damages in cases of performance breaches.^{58/}

Moreover, the Commission should create an entirely separate system of penalties to be imposed if Bell Atlantic-GTE violates any of the other, non-performance related merger conditions. For example, in instances in which the super ILEC fails to provide reports on a monthly basis or refuses to resell VMS to competitors, the Commission should impose a penalty of \$500 per day for

^{58/} See Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 Dated as of June 25, 1996 by and between New York Telephone Company and MFS Intelenet of New York, Inc., at §27.3 (providing for liquidated damages of \$75,000 for each specified performance breach by New York Telephone).

a continuing violation. As in the case of performance breaches, this amount also has a sound basis; 47 U.S.C. § 502 allows the Commission to impose such a fine for each and every day that a person willingly and knowingly violates any Commission rule, regulation, restriction, or condition. Such sanctions will avoid the need for lengthy, time-consuming, and expensive litigation in each case when Bell Atlantic-GTE fails to satisfy a condition of the merger.

With respect to all these conditions it is imperative that they be imposed as conditions precedent to the proposed merger, rather than as future commitments. Unscrambling an effectuated merger is virtually impossible so this Commission's leverage will never be higher than prior to the grant of authority to merge. Moreover the Commission must establish financial penalties for non-performance and, in the event of a dispute, assign the burden of proof to the merged entity. The Commission should adopt penalties sufficient to be taken seriously by the behemoth merged entity.^{59/}

^{59/} A penalty, for example, of \$1,000 per day for not meeting a provisioning deadline would constitute such a minuscule pinprick for a company with combined annual revenues of \$53 billion that it would serve little purpose. Indeed, a penalty of such modest proportions might be the worst of all possible worlds: the amounts in question, even for a substantial delay, would be of no consequence, but the existence of the penalty could be cited as proof that the merged entity is being closely supervised. Hyperion suggests that penalties for unreasonable delays or failures to keep commitments begin at \$10,000 per incident, with each additional day being considered a separate offense. A \$5 million cap will assure that the fines are not disproportionate.

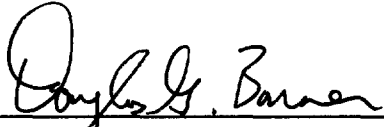
CONCLUSION

For the foregoing reasons, the proposed Bell Atlantic/GTE merger should be disapproved.

If it is approved, approval should be subject to stringent market-opening conditions.

Janet S. Livengood, Esq.
Director of Legal and Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, PA. 15017-2838
(412) 221-1888

By:


Dana Frix
Douglas G. Bonner
Swidler Berlin Shereff Friedman, L.L.P.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
(202) 424-7500 (tel)
(202) 424-7645 (fax)

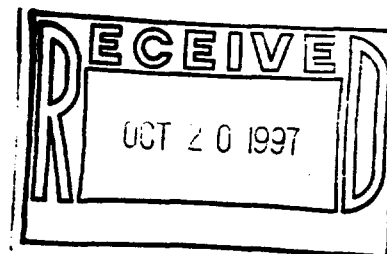
Counsel for Hyperion Telecommunications,
Inc.

Dated: November 23, 1998

EXHIBIT A

Bell Atlantic
1095 Avenue of the Americas
New York, NY 10036
37th Floor
Tel 212 395-6503
Fax 212 768-7568

Maureen Thompson
Regulatory Counsel



October 17, 1997

Via Overnight Mail

Mr. Douglas G. Bonner
Attorney-at-Law
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116

**Re: Interconnection Agreement between Hyperion and New York Telephone Company
d/b/a Bell Atlantic - New York**

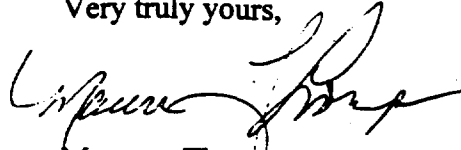
Dear Doug:

As you requested, attached is a signature-ready copy of the Interconnection Agreement between Hyperion and Bell Atlantic - New York ("BA-NY"), which is, in all material respects, the same as the Interconnection Agreement between New York Telephone Company and KMC Telecom. As discussed, we have added a clause to Section 3.0 indicating that if the KMC Agreement is amended in accordance with Section 28.0 then the Hyperion Agreement will also be amended in conformance with such KMC amendment.

It is our understanding that Hyperion has chosen to invoke its rights under Section 252(i) of the Telecommunications Act of 1996, in order to attempt to circumvent the disagreement regarding reciprocal compensation arrangements for traffic delivered within a BA-NY intraLATA calling area to an Internet Service Provider for carriage over the Internet ("ISP Traffic"). As you are aware, BA-NY believes that reciprocal compensation arrangements do not apply to ISP Traffic because such traffic is not intraLATA traffic. Moreover, it is BA-NY's position that the language contained in the KMC Agreement and thus, in the enclosed Hyperion Agreement, regarding reciprocal compensation arrangements exclude ISP traffic. Those arrangements are expressly limited to intraLATA traffic. Thus, BA-NY will not provide reciprocal compensation to Hyperion for ISP Traffic.

If you have any questions or would like to discuss this matter further, please call me on (212) 395-6503.

Very truly yours,



Maureen Thompson

cc: Christopher Tai, Esq.
Peter Eger

EXHIBIT B

SWIDLER
— & —
BERLIN
CHARTERED

December 17, 1997

VIA OVERNIGHT DELIVERY

John C. Crary
Secretary,
New York Public Service Commission
Agency Building 3
Three Empire State Plaza
Albany, NY 12223-1350

Re: Bell Atlantic - New York ("BA-NY") conduct following *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Order, Case 97-C-1275 (N.Y.P.S.C. July 17, 1997)

Dear Secretary Crary:

After months of attempting to negotiate its own interconnection agreement with BA-NY, Hyperion Telecommunications of New York, Inc. and NHT Partnership (collectively "Hyperion") regret to inform the Commission of an ongoing dispute relating to BA-NY's payment of reciprocal compensation for local calls terminated by BA-NY customers to internet service provider ("ISP") customers of Hyperion. BA-NY refuses to pay Hyperion reciprocal compensation for such calls, in defiance of the Commission's unequivocal ruling in the above-referenced Order ("July 17, 1997 Order"). See Attachment A (Affidavit of Christopher J. Rozycki, ¶¶ 20-21). As the reciprocal compensation exclusion for ISP traffic which BA-NY continues to attempt to impose upon CLECs violates the Commission's controlling July 17, 1997 Order, Hyperion respectfully requests that the Commission order BA-NY to comply with the July 17, 1997 Order and meet its reciprocal compensation obligations in New York in a consistent and nondiscriminatory way as to all similarly-situated CLECs.

Hyperion was not among the complaining carriers at whose request Commission staff sent a letter on May 29, 1997 instructing BA-NY to compensate local exchange carriers for calls to their ISP customers. See Attachment B. However, Hyperion did participate in Case 97-C-1275 by filing

Secretary John C. Crary
December 17, 1997
page 2

comments on August 15, 1997 following the Commission's July 17, 1997 Order. In the wake of the Commission's Order, Hyperion expected BA-NY to propose terms in its interconnection agreement consistent with the Commission Order, or which at least did not violate the Order. Significantly, BA-NY's initial proposed draft agreements, including an August, 1997 draft, did not discriminate against the payment of reciprocal compensation for ISP traffic. However, as negotiations were drawing to a close, and without alerting Hyperion, BA-NY unilaterally added new contrary language to a September 26, 1997 draft of the agreement. *See Rozycki Affidavit* ¶ 21. As a consequence of its bad faith negotiating tactics, BA-NY effectively precluded Hyperion from obtaining advantageous, previously negotiated terms by forcing it to opt into another entire interconnection agreement as Hyperion's sole recourse to avoid the financial losses that would result if Hyperion was forced to accept BA-NY's exclusionary and discriminatory reciprocal compensation language for ISP traffic.

BA-NY filed executed interconnection agreements (for both Hyperion entities) for approval with the Commission on December 3, 1997. However, despite terms of the agreement identical to those of other interconnection agreements under which BA-NY must pay reciprocal compensation for ISP traffic to other carriers, BA-NY persists in refusing to pay Hyperion. BA-NY has taken the position that, under the terms of the interconnection agreement that Hyperion has opted into, and notwithstanding the Commission's July 17, 1997 Order, ISP traffic is "interLATA" for which BA-NY has no obligation to pay reciprocal compensation. *See Attachment C* (October 17, 1997 Letter from Bell Atlantic).

Hyperion files this complaint letter to notify the Commission of BA-NY's continuing failure to abide by the Commission's recent Order. Hyperion hereby requests that the Commission compel BA-NY to comply with the terms of the Commission's July 17, 1997 Order as to Hyperion and any other carrier entering into a similar interconnection agreement with BA-NY. Hyperion also requests that Commission staff provide Hyperion with immediate interim relief by directing BA-NY to pay reciprocal compensation to Hyperion for ISP traffic, as it previously did in its May 29, 1997 letter to BA-NY's predecessor (*see Attachment B*).

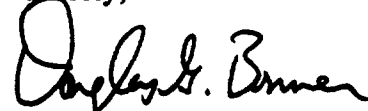
BA-NY seems to be taking the unreasonable, vexatious and discriminatory position that the Commission's July 17, 1997 Order is limited solely to the parties who complained to the Commission prior to that time and does not require BA-NY to conform to the terms of that Order for any similarly-situated carriers. In so doing, BA-NY seeks needlessly to exhaust the limited resources of new entrants such as Hyperion wishing to offer competitive local exchange services in New York by seeking to impose unequal and discriminatory reciprocal compensation terms upon these new entrants. In any case, BA-NY has conceded that the reciprocal compensation issue as it affects Hyperion is ripe for continued Commission action in this docket. Specifically, in the Commission's pending 271 proceeding in Case 97-C-0271, when Hyperion presented evidence that BA-NY continues to defy the July 17, 1997 Order, BA-NY responded that this matter is being

Secretary John C. Crary
December 17, 1997
page 3

addressed by the Commission in other proceedings, presumably meaning this docket. See Attachments D (BA-NY Motion to Strike portions of Rozycki Affidavit) and E (Hyperion response). Accordingly, Hyperion requests the Commission's immediate intervention and granting of relief to Hyperion in this docket.

Of course, if the Commission prefers, Hyperion is prepared to file a formal complaint. However, since the July 17, 1997 Order in Case 97-C-1275 appears squarely to address this legal issue, Hyperion would hope not to have to force a relitigation of this issue before the Commission if possible.

Sincerely,



Douglas G. Bonner
Jonathan D. Draluck

Counsel for NHT Partnership and
Hyperion Telecommunications of
New York, Inc.

cc: The Honorable Jaclyn Brilling
The Honorable Judith Lee
The Honorable Eleanor Stein
Mr. Allan Bausback
Mr. Andrew M. Klein
Ms. Maureen Thompson
Mr. Donald Rowe
Mr. Gary Ball
Mr. Richard C. Fipphen
Ms. Laura F.H. McDonald
Ms. Mary K. O'Connell
Mr. Richard M. Rindler
Mr. Christopher J. Rozycki
Parties in Case 97-C-1275

EXHIBIT C

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1358

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

JOHN F. O'MARA
Chairman
MAUREEN O. HELMER
Deputy Chairman
THOMAS DUNLEAVY
Commissioner



LAWRENCE G. MALONE
General Counsel

JOHN C. CRARY
Secretary

January 15, 1998

Mr. Douglas G. Bonner
Counsel
3000 K Street, N.W.
Suite 300
Washington, DC 20007-5116

Dear Mr. Bonner:

This is in response to your correspondence of December 17, 1997 to Secretary Crary indicating that Bell Atlantic-New York (BA-NY) refuses to pay Hyperion Telecommunications of New York, Inc. (Hyperion) reciprocal compensation for local calls terminated by Hyperion to internet service providers.

As you know, on July 17, 1997 the Commission directed BA-NY to continue paying reciprocal compensation for calls to internet service providers that are customers of competitive local exchange carriers (CLEC's) pending a review of requests from BA-NY and Frontier Communications of New York, Inc. that they be relieved of this obligation. On December 17, 1997, the Commission reviewed the issue, and concluded that the calls in question were local calls and, therefore, should be included in calculations for reciprocal compensation. A written order affirming this decision is pending.

I am advised by Bob Barry that BA-NY is complying with the Commission's decisions and that Hyperion will be compensated for calls it terminates to its internet service provider customers.

Sincerely,


DANIEL M. MARTIN
Chief, Tariff & Rates
Communications Division

cc: Robert Barry

EXHIBIT D

Connie E. Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



**GTE Network
Services**

HQE03B28
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75038
972/718-4586
FAX 972/719-1523

October 20, 1998

Douglas G. Bonner, Esquire
Counsel for Hyperion Telecommunications
Of Virginia, Inc.
Swidler, Berlin, Shereff, Friedman, L.L.P.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Dear Mr. Bonner:

We have received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, you wish to adopt the terms of the Interconnection Agreement between KMC Telecom of Virginia, Inc. and GTE that was approved by the Commission as an effective agreement in the State of Virginia in Docket No. PUC980102 ("Terms"). I understand you have a copy of the Terms.

As these Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of any claim it may have with respect to the 252(i) process, nor does it constitute a waiver of GTE's right to seek review of any Terms that are interpreted contrary to the law.

GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the July 18, 1997 and October 14, 1997, decisions of the United States Eighth Circuit Court of Appeals. Should Hyperion Telecommunications of Virginia, Inc., attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Douglas G. Bonner, Esquire
October 20, 1998
Page 2

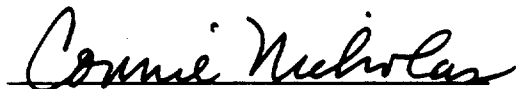
Please indicate by your countersignature on this letter your understanding of and commitment to the following three points:

- (A) Hyperion Telecommunications of Virginia, Inc. adopts the Terms of the KMC Telecom of Virginia, Inc. negotiated agreement for interconnection with GTE and in applying the Terms, agrees that Hyperion Telecommunications of Virginia, Inc. be substituted in place of "KMC Telecom of Virginia, Inc." in the Terms appropriate.
- (B) Hyperion Telecommunications of Virginia, Inc. requests that notice to Hyperion Telecommunications of Virginia, Inc. as may be required under the Terms shall be provided as follows:

To : Hyperion Telecommunications of Virginia, Inc.
500 Thomas Street, Suite 400
Bridgeville, PA 51017

- (C) Hyperion Telecommunications of Virginia, Inc. represents and warrants that it is a certified provider of local dialtone service in the State of Virginia, and that its adoption of the Terms will cover services in the State of Virginia only.

Sincerely,



GTE South Incorporated
Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C:



Hyperion Telecommunications of Virginia, Inc.

- c: R. Bates - NC999142 - Durham, NC
A. Lowery - NC999142 - Durham, NC
M. Marczyk - FLTC0009 - Tampa, FL
R. Ragsdale - HQE03B75 - Irving, TX
S. Spencer - VA401EAF - Richmond, VA
R. Vogelzang - HQE03J41 - Irving, TX

EXHIBIT E

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of _____, _____

by and between

**NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY,
d/b/a
BELL ATLANTIC - VERMONT**

and

HYPERION TELECOMMUNICATIONS OF VERMONT, INC.

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement (this "Agreement"), under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), is effective as of the ____ day of _____, 1998 (the "Effective Date"), by and between New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Vermont ("BA"), a New York corporation with offices at 125 High Street, Boston, Massachusetts 02110, and Hyperion Telecommunications of Vermont, Inc. ("Hyperion") a Delaware corporation with offices at DDI Plaza Two, 500 Thomas Street, Suite 400, Bridgeville, Pennsylvania 15017 (each a "Party" and, collectively, the "Parties").

WHEREAS, Hyperion has requested that BA make available to Hyperion interconnection, service and unbundled network elements upon the same terms and conditions as provided in the Interconnection Agreement (and amendments thereto) between KMC Telecom, Inc. and BA, dated February 14, 1997, for Vermont, approved by the Vermont Public Service Board ("Board") under Section 252 of the Act (the "Separate Agreement") and attached as Appendix 1 hereto; and

WHEREAS, BA has undertaken to make such terms and conditions available to Hyperion hereby only because and, to the extent required by, Section 252(i) of the Act.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hyperion and BA hereby agree as follows:

1.0 Incorporation of Appendix by Reference

1.1 Except as expressly stated herein, the terms and conditions of Appendix 1 hereto (with all Schedules and Exhibits thereto), as it is in effect on the date hereof after giving effect to operation of law, are incorporated by reference in their entirety herein and form an integral part of this Agreement.

1.2 References in Appendix 1 hereto to KMC Telecom, Inc. or to KMC shall for purposes of this Agreement be deemed to refer to Hyperion.

1.3 References in Appendix 1 hereto to the "Effective Date", the date of effectiveness thereof and like provisions shall for purposes of this Agreement be deemed to refer to the date first written above. Unless terminated earlier in accordance with the terms of Appendix 1 hereto, this Agreement shall continue in effect until the Separate Agreement expires or is otherwise terminated.

1.4 The Joint Process referred to in Section 8.1 of Appendix 1 hereto shall be developed upon the request of either Party within a reasonable amount of time after receipt of such request.

1.5 Notwithstanding Section 27.6 of Appendix 1 hereto, at such time as BA makes available the Performance Monitoring Reports set forth in the Memorandum Opinion and Order adopted by the FCC on August 14, 1997 (the "FCC Merger Order") to other Telecommunications Carriers purchasing Interconnection from BA, BA shall provide Hyperion with the Performance Monitoring Reports applicable to Hyperion in accordance with the requirements of said FCC Merger Order.

1.6 All notices, affidavits, exemption-certificates or other communications to Hyperion under Section 29.8 of Appendix 1 hereto shall be sent to the following address:

Hyperion Communications
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, PA. 15017-2838
Attn: Janet S. Livengood, Esq., Director of Legal and
Regulatory Affairs

1.7 All notices, affidavits, exemption-certificates or other communications to BA under Section 29.8 of Appendix 1 hereto shall be sent to the following address:

Tax Administration
Bell Atlantic Corporation
1095 Avenue of the Americas
Room 3109
New York, New York 10036

1.8 Notices to Hyperion under Section 29.12 of Appendix 1 hereto shall be sent to the following address:

Hyperion Communications
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, PA. 15017-2838
Attn: Janet S. Livengood, Esq., Director of Legal and
Regulatory Affairs
Facsimile: (412) 220-5162

with a copy to:
Swidler Berlin, Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Attn: Dana Frix and Douglas G. Bonner
Facsimile: (202) 424-7645

1.9 Notices to BA under Section 29.12 of Appendix 1 hereto shall be sent to the following address:

Bell Atlantic Corporation
1095 Avenue of Americas
40th Floor
New York NY 10036
Attn: President - Telecom Industry Services
Facsimile: (212) 597-2585

with a copy to:

Bell Atlantic Network Services, Inc.
Attn: Mr. Jack H. White,
Associate General Counsel
1320 N. Court House Road, 8th Floor
Arlington, Virginia 22201
Facsimile: (703) 974-0744

with a copy to:

Bell Atlantic Corporation
Attn: Mr. Thomas Dailey
General Counsel, Vermont
185 Franklin Street, R. 1403
Boston, MA 02110
Facsimile: (617) 737-0648

1.10 Schedule 4.0 set forth at Appendix 2 hereto shall replace and supersede in its entirety Schedules 4.0 of Appendix 1.

2.0 Clarifications

2.1 The Parties agree that if the Separate Agreement is amended, modified or supplemented, or if the Vermont Public Service Board ("Board"), a United States District Court exercising jurisdiction under 47 U.S.C. § 252(3)(6) concerning a Board-approved interconnection agreement, the courts of Vermont, the FCC, a United States Court of Appeals or the Supreme Court of the United States ~~any judicial or regulatory authority of competent jurisdiction makes (or has made) any determination regarding whether or not determines (or has determined) that BA is is-not required to furnish any service, network element or item, or to provide any other benefit originally required to be provided under the Separate Agreement to telecommunications carriers otherwise required to be furnished or provided to Hyperion hereunder,~~ then either Party BA may, at its sole option, in cooperation with the other Party, avail itself of any such amendment, modification, supplement, or determination by providing written notice thereof to Hyperion the other Party. Under such circumstances, the Parties agree to negotiate in good faith an

appropriate amendment, modification or supplement to the corresponding or related provisions contained in this Agreement, which amendment, modification or supplement shall be effective from the date of written notice by the availing Party (or, in the case of any determination of a judicial or regulatory authority as identified above, the date thereof or the date of effectiveness noted therein, if so noted).

2.2 ~~Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that BA shall only be required to provide Combinations and any services related to its provision of Combinations to the extent (a) required by Applicable Law or (b) mutually agreed to by the Parties in writing after the date hereof.~~ The Parties recognize that they disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider ("ISP") connected to the other Party's network ("ISP Traffic") constitutes Local Traffic under the Separate Agreement, and the charges, if any, to be assessed in connection with such traffic. The issue of whether such traffic constitutes Local Traffic for which Reciprocal Compensation must be paid pursuant to the Telecommunications Act of 1996 is presently before the FCC in CCB/CPD 97-30, and may be (or may come) before the Board or a court of competent jurisdiction. The Parties agree that the decision of the Board, the FCC or such court may determine whether such traffic is Local Traffic and the charges, if any, to be assessed in connection with ISP Traffic.

2.3 ~~The reciprocal compensation provisions set forth in this Agreement do not apply to Internet bound traffic because such traffic is not local traffic.~~

2.4 ~~The entry into, filing and performance by BA of this Agreement does not in any way constitute a waiver by BA of any of the rights and remedies it may have to seek review of any of the provisions of the Separate Agreement, or to petition the Commission, other administrative body or court for reconsideration or reversal of any determination made by any of them, or to seek review in any way of any portion of this Agreement in connection with Hyperion's election under Section 252(i) of the Act.~~

2.45 Hyperion has an extensive network of facilities in Vermont over which it provides a wide variety of business local exchange, toll, and data services in diverse locations around Vermont. Hyperion also has business and residence local exchange Tariffs on file with the Public Service Board, and the facilities in place to deliver competitive local exchange services in urban, suburban, and rural areas of Vermont. The delivery of such residence services, on a facilities basis, is an important matter of public policy in Vermont.

Recognizing the importance of facilities-based competition to Vermont, Hyperion agrees to take all necessary steps to provide residence local exchange services, using its own or predominantly its own facilities, at diverse locations in Vermont, including the following:

(a) On or before 60 days following the execution of this Agreement, Hyperion agrees to amend its existing residence Tariffs to include prices and any other terms as may be necessary to provide residence local exchange service;

(b) On or before 60 days after the filing of such Tariffs, to provide public notice of the availability of residence local exchange service and to begin the provision of such service within 30 days thereafter.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this ____ day of _____, ____.

HYPERION TELECOMMUNICATIONS,
INC.

BELL ATLANTIC-VERMONT

By: _____

By: _____

Printed: _____

Printed: Jeffrey A. Masoner

Title: _____

Title: Vice President – Interconnection Services
Policy & Planning

EXHIBIT F

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

WASHINGTON OFFICE
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647

Please Date Stamp & Return

NEW YORK OFFICE
919 THIRD AVENUE
NEW YORK, NY 10022-9904
TELEPHONE (212) 755-9500
FACSIMILE (212) 755-9506

November 13, 1998

RECEIVED

NOV 13 1998
AMERICAN ARBITRATION
ASSOCIATION
WASHINGTON, D.C.

VIA HAND DELIVERY

American Arbitration Association
1150 Connecticut Avenue, N.W.
6th Floor
Washington, D.C. 20036-4104

Re: Hyperion Susquehanna Telecommunications Demand for Arbitration

Dear Sir/Madam:

Hyperion Susquehanna Telecommunications ("Hyperion"), by undersigned counsel, hereby submits three (3) copies of its Demand for Arbitration against GTE North, Incorporated ("GTE") in accordance with the Interconnection Agreement between GTE and Hyperion and Rule 6 of the American Arbitration Association's ("AAA") Commercial Arbitration Rules. Hyperion is also submitting three copies of the parties' Interconnection Agreement. The original Demand for Arbitration and a copy of the Interconnection Agreement have been sent to GTE by overnight delivery.

Also enclosed is a check in the amount of \$5,000.00 to cover the filing fee.

Please date stamp the enclosed extra copy of this filing and return it in the self-addressed, postage-paid envelope enclosed. Should any questions arise concerning this matter, please do not hesitate to call us.

Respectfully submitted,

Dana Erix
Douglas G. Bonner

Counsel for
Hyperion Susquehanna Telecommunications

Enclosures

cc: Phil Fraga, Esq.
Janet S. Livengood, Esq.
Michael P. Donahue, Esq.
Ms. Ann Lowery (GTE)

American Arbitration Association
Commercial Arbitration Rules
DEMAND FOR ARBITRATION

Date: November 13, 1998

To institute proceedings, please send three copies of this demand and the arbitration agreement, with the filing fee as provided in the rules, to the AAA. Send the original demand to the respondent.

To: GTE North, Incorporated
212 Locust Street
Suite 600
Harrisburg, PA 17108
Attn: Regulatory/Governmental Affairs Director

Ms. Ann Lowery
Senior Manager, Local Competition
GTE Telephone Operations
4100 N. Roxboro Road
Durham, North Carolina 27702

The claimant, Hyperion Susquehanna Telecommunications, a party to an interconnection agreement with GTE North, Incorporated executed on June 16, 1997 (the "Agreement"), hereby demands arbitration under Section 14.3 of the Agreement which provides for arbitration of disputes under the Commercial Arbitration Rules of the American Arbitration Association.

THE NATURE OF THE DISPUTE:

Despite repeated demands for payment and unsuccessful negotiations between the parties, GTE has failed to pay reciprocal compensation charges billed by Hyperion under the Agreement during the months of May through November, 1998. These charges are to recover Hyperion's costs for the transport and termination of local calls to Hyperion customers from GTE customers for which reciprocal compensation payments are required under the Agreement and pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 251(b)(5) and 252(d)(2).

THE CLAIM OR RELIEF SOUGHT:

Claimant seeks in excess of \$ 584,216.58 (see Exhibit 1), plus a late payment fee of 6% per annum upon unpaid charges as of the date of this Demand, as well as additional charges that will become due in the future, and Hyperion's arbitration expenses, including filing fees, arbitrator expenses, and other costs of arbitration.

DOES THIS DISPUTE ARISE OUT OF AN EMPLOYMENT RELATIONSHIP? YES ☒ NO

TYPE OF BUSINESS: Claimant: Competitive Local Exchange Carrier Respondent: Incumbent Local Exchange Carrier

HEARING LOCALE REQUESTED: Washington, D.C.

You are hereby notified that copies of our interconnection agreement and this demand are being filed with the American Arbitration Association at its Washington, D.C. office, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within ten days after notice from the administrator.

Signed Douglas G. Bonner Title Attorney for Claimant

Name of Claimant: Hyperion Susquehanna Telecommunications
Address: DDI Plaza Two
500 Thomas Street, Suite 500
Bridgeville, PA 15017-5116
(412) 221-1888 (Phone)
(412) 221-6642 (Fax)

Claimant's Representative: Douglas G. Bonner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
(202) 424-7701 (Phone)
(202) 424-7645 (Fax)

EXHIBIT I

Date of bill	Credits	Billed	Total
April 1, 1998	-\$ 36,940.77	\$ 36,975.95	\$ 35.18
May 1, 1998	-\$ 35.18	\$ 60,058.14	\$ 60,058.14
June 1, 1998	-\$ 60,058.14	\$ 70,399.79	\$ 70,399.79
July 1, 1998		\$ 80,308.33	\$ 150,708.12
August 1, 1998		\$ 101,379.83	\$ 252,087.95
September 1, 1998		\$ 113,757.53	\$ 365,845.48
October 1, 1998		\$ 117,314.77	\$ 483,160.25
November 1, 1998		\$ 101,056.33	\$ 584,216.58